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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,652	01/14/2002	Daniel F. Moore	09857-071001	1073
26161	7590	09/28/2005		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER SHERR, CRISTINA O	
			ART UNIT 3621	PAPER NUMBER
DATE MAILED: 09/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/046,652

**Applicant(s)**

MOORE ET AL.

**Examiner**

Cristina Owen Sherr

**Art Unit**

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2002.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This communication is in response to the application filed January 14, 2002.

Claims 1-25 have been examined in this case.

#### ***Specification***

2. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard et al (US 6,016,483).

6. Regarding claim 1 –

Rickard discloses a method of determining an opening price for a product traded in a trading system, the method executed over a distributed network computer system, said method comprising: with removing further comprising: identifying the oldest of interest at the most aggressive price on each side of the market; selecting the older interest of the identified interest to designate as initial interest; and matching initial interest against all contra side interest (e.g. col 6 ln 45- col 7 ln 47, col 10, 40-55; col 11 ln 15-25).

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7. Rickard does not specifically discuss detecting a lock/cross condition in the market prior to opening; removing the lock/cross condition to allow opening of trading in the particular product. However, it would be obvious to one of ordinary skill in the art to adapt Rickard to include this, or any number of other steps, in order to more efficiently and profitably trade.

8. Regarding claim 2 –

Rickard discloses products that are financial instruments (e.g. col 2 ln 60-67; col 4 ln 1-5).

9. Regarding claim 3 –

Rickard discloses calling an internalizing agent process to match orders against contra side interest of a market participant at the best price and having an ID matched to the order (e.g. col 1 ln 25-45).

10. Regarding claim 4 –

Rickard discloses interest that is all quote generated and non-directed, priced orders and the initial interest is designated as an incoming order (e.g. col 6 ln 45 – col 7 ln 50, col 10 ln 40-55).

11. Regarding claim 5 –

Rickard discloses executing any remaining interest in a particular priority (e.g. col 6 ln 5-60).

12. Regarding claim 6 –

Rickard discloses the method wherein the particular priority is Price/Time priority (e.g. col 7 ln 25-40).

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13. Regarding claim 7 –

Rickard discloses the method wherein interest exists at multiple price levels on each side of the market and at each price level, all Display interest is execute first before moving to another price level (e.g. col 7 ln 35-50).

14. Regarding claim 8 –

Rickard discloses the method wherein interest exists at multiple price levels on each side of the market and at each price level, all displayed interest is execute first followed by any Reserve Size before moving to another price level (e.g. col 7 ln 35-50).

15. Regarding claim 9 –

Rickard discloses the method of claim 8 wherein reserve size is executed in the order in which displayed size was executed (e.g. col 7 ln 35-50).

16. Regarding claim 10 –

Rickard discloses the method of claim 1 wherein the sides of the market are a bid side and an offer side (e.g. col 6 ln 45 – col 7 ln 50).

17. Regarding claim 11 –

Rickard discloses the method wherein executions occur at the price of the book interest so that any price improvement is realized by the initial interest (e.g. col 6 ln 45 – col 7 ln 50).

18. Regarding claim 12 –

Rickard discloses the method wherein after an execution occurs, the method further comprises: updating quote-generated orders (e.g. col 6 ln 45 – col 7 ln 50).

19. Regarding claim 13 –

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Rickard discloses the method of claim, and as above, does not specifically discuss detecting a lock/cross condition in the market prior to opening; removing the lock/cross condition to allow opening of trading in the particular product. However, it would be obvious to one of ordinary skill in the art to adapt Rickard to include this, or any number of other steps, in order to more efficiently and profitably trade.

20. Regarding claims 14-25 –

Claims 14-25 are written as a computer program and as a system and contain the same limitations as claims 1-13 above. The same rejections, therefore, apply.

21. Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

23. Madoff et al (US 2002/0019795) discloses an opening price process for trading system.

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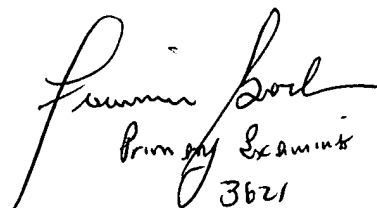
24. Moore et al (US 2003/0229563) discloses an opening price process for trading system.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Primary Examiner  
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